26

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

No. 968 408

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

HOMER GUDGER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED APRIL 15, 1918

(26435)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 968.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

HOMER GUDGER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

INDEX.

1 *Stipulation of counsel as to contents of record.*

Filed March 21, 1918.

UNITED STATES
v.
HOMER GUDGER.

It is hereby stipulated and agreed that the record in this case shall consist of the following:

Indictment,
Bill of particulars,
Orders of court,
Opinion of the court,
Bill of exceptions,
Assignments of error.

R. E. BYRD,
United States Attorney.
N. H. HAIRSTON,
Counsel for Defendant.

March 21, 1918.

2 *Indictment.*

Filed February 19, 1918.

UNITED STATES
v.
HOMER GUDGER.

UNITED STATES OF AMERICA,
Western District of Virginia.

United States District Court, February Term 1918, at Roanoke, Virginia.

The grand jurors of the United States, chosen, selected, and sworn in and for the Western District of Virginia, upon their oaths present that heretofore, to wit, on the — day of February, 1918, Homer Gudger did knowingly, unlawfully, and feloniously cause to be transported in interstate commerce intoxicating liquors not for scientific, sacramental, medicinal, or mechanical purposes, to wit, seven quarts and three pints of whiskey, from Baltimore, in the State of Maryland, to Lynchburg, in the State of Virginia, in said Western District of Virginia and within the jurisdiction of this court, the State of Virginia, into which the said Homer Gudger did cause the aforesaid intoxicating liquors, to wit, seven quarts and three pints of whiskey, to be transported, was then and still is a State which prohibits the manufacture or sale therein of intoxicating liquors for beverage purposes, contrary to the form of the statute of the United

States in such case made and provided and against the peace and dignity of the United States.

(Vio. Act approved Mar. 3, 1917.)

R. E. BYRD,
United States Attorney.

(Endorsements:) United States District Court, Western District of Virginia. The United States v. Homer Gudger, Campbell Co. Indictment for act March 3, 1917. (Reed & Jones, amend.) A true bill. Phillip W. Huff, foreman grand jury. Filed Feb. 19, 1918. Stanley W. Martin, clerk.

3 *Bill of particulars.*

Filed February 19, 1918.

In the District Court of the United States for the Western District of Virginia, at the February term thereof, 1918, at Roanoke, Va.

UNITED STATES
v.
HOMER GUDGER. } Indictment No. 942.

For bill of particulars of the charge made in this indictment, the United States of America by its attorney comes and says that the facts which will appear in evidence are as follows:

The said Gudger having in his possession a round-trip ticket from Baltimore, Maryland, to Asheville, North Carolina, and back, was on his way from Baltimore to Asheville, arrested in Lynchburg, Virginia, while on the train, and there was found in his dress-suit case seven quarts and three pints of whiskey. Both Virginia and North Carolina are States which prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes. The defendant admits that the liquor was being carried in interstate commerce for beverage purposes, and it is admitted by the Government that his intention was to take the liquor through the State of Virginia and into North Carolina, and there will be no evidence tending to show an intention or design on his part to discontinue his journey or to dispose of the liquor within the State of Virginia.

The charge in the indictment that the defendant caused to be transported liquor to Lynchburg, in the State of Virginia, has no other foundation than the fact that he was arrested while the train was stopped at the railroad station in Lynchburg, Virginia, and while he was en route to Asheville, North Carolina.

R. E. BYRD,
United States Attorney.

(Endorsed:) Filed Feby. 19, 1918. S. W. Martin, clerk, by Frank J. Hall, D. C.

4 *Order quashing indictment.*

February 19, 1918.

At a regular term of the United States District Court, for the Western District of Virginia, continued and held at Roanoke, in and for said district, on the 19th day of February, 1918. Hon. Henry C. McDowell, Judge.

UNITED STATES
v.
HOMER GUDGER.

This day came the United States attorney and came also the defendant in proper person and by his attorney, N. H. Hairston, and the Government, by its attorney, filed a bill of particulars of the charges in the indictment. And thereupon the defendant demurred to said indictment as explained by said bill of particulars and moved the court to quash the same on the ground that the said indictment as explained by the bill of particulars is not sufficient in law. Upon consideration thereof, for reasons reduced to writing and this day filed, the court doth sustain said demurrer and orders that the said indictment be quashed.

And the attorney for the United States having indicated his intention to sue out a writ of error, it is ordered that said defendant be recognized for his appearance on the second day of the first term of this court held after the mandate of the United States Supreme Court in said cause shall be received by this court.

And thereupon came the said defendant, Homer Gudger, and acknowledged himself indebted to the United States of America in the sum of $100, of his goods and chattels, lands and tenements, to be levied and to the use of the United States render, yet, upon condition, that if the said defendant shall appear before this court to answer the indictment against him on the second day of the first term of this court held after the mandate of the United States Supreme Court in said cause shall be received by this court, provided this court is not sustained by said Supreme Court and shall not depart the court without leave thereof, then this recognizance shall be null and void, otherwise to remain in full force and effect, said defendant waiving his homestead exemption as to this obligation.

5 *Opinion.*

Filed February 19, 1918.

UNITED STATES
v.
HOMER GUDGER.

The bill of particulars filed in this case shows that the defendant was a passenger on a railroad train from Baltimore, Maryland, to

Asheville, North Carolina, and that while the train was temporarily stopped at the station at Lynchburg, Virginia, he was arrested, his baggage examined, and it was found that he had in his valise some seven quarts or more of whiskey. The particulars show clearly that the evidence will be that he had no intention of leaving the train at Lynchburg or at any other point in Virginia and that his sole intention was to carry the liquor with him into the State of North Carolina, to be there used as a beverage. I am of opinion that the act of March 3, 1917, was not intended to forbid transportation through a State which prohibits the manufacture or sale of liquor. In this case it appears from the facts that North Carolina is also a state which prohibits the manufacture or sale of liquor; but a mere intention to violate the law is not sufficient and I am of opinion that the defendant could not have violated the law—treating transportation of liquor into North Carolina as a violation—at least, until he had reached the North Carolina line. I am of opinion, therefore, to sustain the defendant's demurrer and I base this conclusion entirely upon my construction of the statute.

HENRY C. McDOWELL,
District Judge.

Feby. 19, 1918.

(Endorsed:) Filed Feby. 19, 1918. S. W. Martin, Clerk, by Frank J. Hall, D. C.

6 In the District Court of the United States for the Western District of Virginia, continued and held at Roanoke, Virginia.

UNITED STATES OF AMERICA
vs.
HOMER GUDGER. } Indictment No. 942.

Bill of exceptions.

Be it remembered that, upon the calling of this case at a former day of the February term of this court, to wit, on the 19th day of February, 1918, the attorney for the plaintiff having obtained leave so to do, filed the following as a bill of particulars of the indictment in this cause:

UNITED STATES
vs.
HOMER GUDGER.

For bill of particulars of the charge made in this indictment, the United States of America by its attorney comes and says that the facts which will appear in evidence are as follows:

That said Gudger having in his possession a round-trip ticket from Baltimore, Maryland, to Asheville, North Carolina, and back, was

on his way from Baltimore to Asheville, arrested in Lynchburg, Virginia, while on the train and there was found in his dress suit case seven quarts and three pints of whiskey. Both Virginia and North Carolina are States which prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes. The defendant admits that the liquor was being carried in interstate commerce for beverage purposes, and it is admitted by the Government that his intention was to take the liquor through the State of Virginia and into North Carolina, and there will be no evidence tending to show an intention or design on his part to discontinue his journey or to dispose of the liquor within the State of Virginia.

The charge in the indictment that the defendant caused to be transported liquor to Lynchburg, in the State of Virginia, has
7 no other foundation than the fact that he was arrested while the train was stopped at the railroad station in Lynchburg, and while he was en route to Asheville, North Carolina.

R. E. Byrd,
United States Attorney.

And the aforesaid bill of particulars having been filed, the defendant, by counsel, thereupon demurred to the said indictment, as particularized by the said above mentioned bill of particulars, on the ground that the same was not sufficient in law and alleged no offense against the United States, and also moved the court to quash the said indictment.

And thereupon the court, because of its construction of the act of Congress approved March 3, 1917, sustained said demurrer and ordered the said indictment quashed. And to this action by the court plaintiff, by its counsel, did then and there duly except.

And in order that the foregoing may become a part of the record in this cause, the plaintiff prays that this, its bill of exception, may be signed and made a part of the record, and the same is accordingly done this 20th day of March, 1918.

(Signed) Henry C. McDowell,
District Judge.

8 In the District Court of the United States for the Western District of Virginia, continued and held at Roanoke, Virginia.

United States of America
vs.
Homer Gudger. } #942.

Assignment of error.

The plaintiff in this proceeding makes the following assignment of error:

The indictment and the bill of particulars charge the following facts:

That, on the — day of February, nineteen hundred and eighteen, the defendant, Homer Gudger, was a passenger on a railroad train

from Baltimore, in the State of Maryland, to Asheville, in the State of North Carolina, and that while he was such passenger he had in his possession and was transporting seven quarts of whiskey from Baltimore, in the State of Maryland, to Asheville, in the State of North Carolina; that he was not transporting said seven quarts of whiskey for scientific, sacramental, medicinal, or mechanical purposes; that the train upon which he was a passenger was temporarily stopped in Lynchburg, Virginia; that he did not leave the train at Lynchburg, Virginia, nor did he intend to leave said train at any other point in the State of Virginia; that while the train was thus stopped at Lynchburg, Virginia, his valise was searched
9 and the seven quarts of whiskey found therein; that his sole intention was to transport said seven quarts of whiskey from Baltimore, in the State of Maryland, to Asheville, in the State of North Carolina, a State which prohibits the sale and manufacture of intoxicating liquors, to be there used as a beverage.

In sustaining the demurrer to said indictment and in quashing the same the court erred, in that it construed the statute under which said indictment was drawn, to-wit, the act of Congress approved March 3, 1917, to the effect that the state of facts above set out did not constitute an offense against the United States of which the United States District Court for the Western District of Virginia could take cognizance.

R. E. BYRD.
United States Attorney for the Western District of Virginia.

10 *Memorandum as to original papers transmitted.*

I, S. W. Martin, clerk of the United States District Court for the Western District of Virginia, at Roanoke, Virginia, certify as follows:

That the petition for writ of error was filed March 20, 1918.

That order allowing writ of error is dated March 20, 1918.

That writ of error issued March 20, 1918.

That citation is dated March 20, 1918; that service of said citation was accepted on March 21, 1918.

That the original papers mentioned in this memorandum have been sent to the clerk of the United States Supreme Court, at Washington, D. C.

Given under my hand this 8th day of April, 1918.

S. W. MARTIN, *Clerk*,
By FRANK J. HALL, *Deputy*.

UNITED STATES OF AMERICA,
Western District of Virginia, to-wit:

I, S. W. Martin, clerk of the United States District Court for the Western District of Virginia, do certify that the foregoing is a true transcript of the record and proceedings of the District Court of the United States for the Western District of Virginia, made up in

accordance with the stipulation of counsel as to the papers to be included in said transcript, filed in said cause on the 21st day of March, 1918.

In testimony whereof, I hereunto set my hand and affix the seal of the said court this 8th day of April, 1918.

[SEAL.]

S. W. MARTIN, *Clerk*,
By FRANK J. HALL, *Deputy*.

11 In the District Court of the United States for the Western District of Virginia, continued and held at Roanoke, Virginia.

UNITED STATES OF AMERICA
vs.
HOMER GUDGER.

Violation of act of March 3, 1917.

To the Honorable Henry C. McDowell, judge of the District Court of the United States for the Western District of Virginia:

Petitioner, United States of America, respectfully presents to the court the following:

That at the February, 1918, term of the United States District Court for the Western District of Virginia, held at Roanoke, Virginia, an indictment was returned in a case wherein the United States of America was plaintiff and Homer Gudger was defendant, in which said Homer Gudger was charged with a violation of the act of Congress approved March 3, 1917; that the indictment charging said offense was duly returned into court and filed on the 19th day of February, 1918; that at the February, 1918, term of said court the said plaintiff filed in said cause a bill of particulars of said offense, which said bill of particulars fully appears in the transcript of the record herewith filed; that thereupon, in open court, the defendant demurred to said indictment and moved to quash the same on

12 the ground *on the ground* that said indictment, as explained by said bill of particulars, was not sufficient in law; that the court sustained said demurrer and granted said motion to quash said indictment, to which ruling of the court the plaintiff, by its counsel, excepted. And thereupon a judgment was entered accordingly.

That petitioner is aggrieved by the judgment of said court, and is advised that in rendering said judgment error was committed to the prejudice of the petitioner—that is to say, the court erred in sustaining the said demurrer and in ordering said indictment quashed, because it appeared from said indictment, as amplified by said bill of particulars, that said Homer Gudger was a passenger on a railroad train from Baltimore, in the State of Maryland, to Asheville, in the State of North Carolina, and that while the train was temporarily stopped at the station in Lynchburg, Virginia, it was found that he had in his valise seven quarts of whiskey, but that he

had no intention of leaving the train at Lynchburg, Virginia, or any other point in the State of Virginia, and that it was his sole intention to carry the liquor with him to Asheville, in the State of North Carolina—a State which prohibits the manufacture or sale of liquor—to be there used as a beverage.

A complete transcript of the record in said case, properly certified by the clerk of the court, is herewith filed and asked to be taken as a part thereof, the same being marked "Exhibit A."

13 Wherefore the plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

March —, 1918.

R. E. BYRD,
United States District Attorney for the Western District of Virginia.

Filed March —, 1918.

———— ————,
Clerk.

(Indorsed:) U. S. v. Homer Gudger. No. 942. Petition for writ of error. U. S. Clerk's Office, W. Dist. Va., at Roanoke, Mar. 20, 1918. Filed. Frank J. Hall, D. Clerk of the Court.

14 In the District Court of the United States for the Western District of Virginia, continued and held at Roanoke, Virginia, on March 20, 1918.

UNITED STATES OF AMERICA
vs.
HOMER GUDGER.

Order allowing writ of error.

This day came the United States, by its attorney for the Western District of Virginia, and presented its petition for a writ of error in this cause, which petition is ordered filed, upon consideration whereof it appearing that the transcript and assignment of error have been duly filed, it is ordered that the writ of error issue as prayed for and that the record and proceedings of this court in this cause be duly certified by the clerk of this court at Roanoke to the clerk of the United States Supreme Court.

Filed March —, 1918.

———— ————, *Clerk.*

(Indorsed:) U. S. v. Homer Gudger. No. 942. Order allowing writ of error. March 20, 1918. Enter. Henry C. McDowell. U. S. Clerk's Office, W. Dist. Va., at Roanoke, Mar. 20, 1918. Filed. Frank J. Hall, D. Clerk of the Court.

15 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the District Court of the United States for the Western District of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America and Homer Gudger, a manifest error hath happened, to the great damage of the said United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court of the United States at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 20th day of March, in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] S. W. MARTIN,
Clerk of the District Court of the United States for the Western District of Virginia.
By FRANK J. HALL, *Deputy.*

Allowed by—
HENRY C. McDOWELL,
District Judge.

15½ In obedience to the command of the within writ, I herewith transmit to the Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of the District Court of the United States for the Western District of Virginia.

[SEAL.] S. W. MARTIN, *Clerk,*
By FRANK J. HALL, *Deputy.*

(Indorsed:) U. S. v. Homer Gudger. 942. Writ of error. U. S. Clerk's Office, W. Dist. Va., at Roanoke, Mar. 20, 1918. Filed. Frank J. Hall, D. Clerk of the Court.

16 *The President of the United States to Homer Gudger, greeting:*

You are hereby cited and admonished to be and appear at the United States Supreme Court at Washington, in the District of Columbia, within thirty days from this date, pursuant to a writ of

error filed in the clerk's office of the District Court of the United States for the Western District of Virginia at Roanoke, wherein the United States of America is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Henry C. McDowell, judge of the United States District Court for the Western District of Virginia, this March 20th, 1918.

HENRY C. McDOWELL,
District Judge.

(Indorsed:) U. S. v. Homer Gudger. No. 942. Citation. U. S. Clerk's Office, W. Dist. Va., at Roanoke, Mar. 20, 1918. Filed. Frank J. Hall, D. Clerk of the Court.

17 *The President of the United States to Homer Gudger, greeting:*

You are hereby cited and admonished to be and appear at the United States Supreme Court at Washington, in the District of Columbia, within thirty days from this date, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Virginia at Roanoke, wherein the United States of America is plaintiff and you are defendant in error, to show cause if any there be why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Henry C. McDowell, judge of the United States District Court for the Western District of Virginia, this March 20th, 1918.

[SEAL.] HENRY C. McDOWELL,
District Judge.

A copy, teste:
FRANK J. HALL, *Dep. Clk.*

18 Legal service of the within citation is hereby accepted this 21st day of March, 1918.

N. H. HAIRSTON,
Counsel for Homer Gudger.

(Indorsed:) U. S. v. Homer Gudger. No. 942. Copy of citation showing acceptance of service. U. S. Clerk's Office, W. Dist. Va., at Roanoke, Mar. 21, 1918. Filed. Frank J. Hall, D. Clerk, U. S. Court.

(Indorsed:) Office of the clerk, received Apr. 11, 1918. Supreme Court U. S.

(Indorsement on cover:) File No. 26435. W. Virginia D. C. U. S. Term No. 968. The United States of America, plaintiff in error, vs. Homer Gudger. Filed April 15th, 1918. File No. 26435.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, *v.* HOMER GUDGER. } No. 408.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the United States and, in accordance with the provisions of section 5, rule 26, moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

STATEMENT.

The case arises under what is known as the Reed Amendment, being the act of Congress which penalizes the transportation of intoxicating liquors into States whose laws prohibit their manufacture or sale as a beverage. The indictment charged that the defendant had personally transported 7 quarts and 3 pints of liquor in his suit case from Baltimore, Md., to Lynchburg, Va. It was quashed because its

averments showed that defendant was in the act of carrying the liquor through Virginia to North Carolina, and the District Judge thought that it had not, therefore, been transported into Virginia within the meaning of the law. Act of March 3, 1917, 39 Stat. 1058, 1069.

In order to insure a prompt and uniform enforcement of this penal law of the United States and on account of the importance of having its meaning determined without delay, it is submitted that the case should have an early hearing.

Notice of this motion has been served upon opposing counsel.

G. CARROLL TODD,
Assistant to the Attorney General.

OCTOBER, 1918.

○

No. 512.

In the Supreme Court of the United States.

October Term, 1913.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

HOMER GOMEZ.

IN ERROR TO THE DISTRICT COURT OF THE DISTRICT OF THE NORTH DISTRICT OF NEVADA.

BRIEF FOR THE UNITED STATES.

SUPREME COURT PRINTING CO., WASH., D. C.

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AUTHORITIES CITED.

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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES OF AMERICA, plaintiff in error, *v.* HOMER GUDGER. } No. 408.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The writ of error in this case brings under review the action of the district judge in quashing an indictment charging a violation of that part of section 5 of the Post Office appropriation act of March 3, 1917 (39 Stat. 1058, 1069), which is known as the Reed Amendment, and is as follows:

> * * * Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manu-

facture or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid: *Provided*, That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State: * * *.

THE INDICTMENT.

According to the indictment and the accompanying bill of particulars the facts are that defendant was a passenger on a railroad train, riding on a round-trip ticket from Baltimore, Md., to Asheville, N. C., and return. While the train was standing at Lynchburg, Va., he was arrested and there had in his possession, in his suit case, 7 quarts and 3 pints of whisky, which he had brought with him from Baltimore and intended to carry to North Carolina for beverage purposes. The laws of both Virginia and North Carolina forbid the manufacture and sale of intoxicating liquors. He is charged with causing this whisky to be transported in interstate commerce from Baltimore, Md., to Lynchburg, Va.

THE DECISION BELOW.

The learned district judge thought that while the transportation of this liquor into North Carolina, as intended, would have been an offense, the Reed Amendment did not forbid the transportation of liquor *through* a dry State, and quashed the indictment.

The judgment is based on the conception that, although carried across a State, goods are not "transported into" the State if their ultimate destination is a point beyond the limits of that State, and that

the carrying of these liquors from Baltimore to Lynchburg was not a "transportation into" Virginia, because defendant intended to carry them on to North Carolina, so that their ultimate destination was a point beyond Virginia.

THE GOVERNMENT'S CONTENTIONS.

The contentions for reversal are based on the conception that any carrying of goods across a State line is a "transportation into" the State regardless of what their ultimate destination may be. These contentions are:

First. The prohibition against the transportation of liquor into a dry State is absolute save only when intended for one of the four excepted purposes. In other words, whenever liquor is being transported in interstate commerce and not for one of the excepted purposes and crosses the line of a dry State into that State the Reed Amendment has been violated, whether such liquor be intended for consumption or sale or only for further transportation or for any other purpose.

Second. Whatever may be said of the right of a common carrier to transport liquor, committed to its custody, through a dry State, one who, like this defendant, enters a State personally transporting liquor which is in his posession and under his control and which he is at liberty to drink, sell, give away, or dispose of as he sees fit, has undoubtedly transported the liquor into that State, even though it may be his intention, unless he changes his mind, to carry it on to another State.

QUESTION INVOLVED.

The question at issue, therefore, is whether liquor carried across a State line has, at once, been "transported into" the State within the meaning of the Reed Amendment, or whether it has been so transported only when, in addition to crossing a State line, it has also reached its ultimate destination. If the former be the rule, then obviously there is no violation of the law so long as the liquor is only passing through the State to its ultimate destination in another State, and equally obviously no offense has been committed while it is passing from the State line to, but has not reached, an ultimate destination in the State. But if the crossing of the State line constitutes an offense, it is wholly immaterial whether the ultimate or intended destination be within or without the State.

BRIEF.

(1)

The accepted definition of "transport" is "to carry or convey from one place to another," and that of the word "into" is:

> To and in; to the inside of. Denoting: (1) Entrance in respect of a place or thing; used with verbs of motion; as, come *into* the house. (2) Penetration through an outside; as, he cut *into* the wood; look *into* my heart. (3) Insertion; impartation; as, to put depth *into* a picture. (Standard Dictionary.)

(II)

When, therefore, the Reed Amendment made it unlawful to cause liquor "to be transported into" a State, as these words are ordinarily understood, it forbade the carrying or conveying to and in that State such liquor so as to cause the State to be entered by crossing the State line. (39 Stat. 1058, 1069.)

(III)

The act contains nothing from which an intent to use the words employed in a different sense than that in which they are ordinarily understood can be inferred.

(IV)

Prior to the passage of the Reed Amendment Congress had not directly prohibited the shipment of liquor into any State. By the Wilson Act it had permitted a State to control imported liquor as soon as delivered to the consignee. By the Webb-Kenyon Act it had made it possible for a State to control importations. The Reed Amendment establishes a uniform rule regulating transportation into dry States. (26 Stat., c. 728, p. 313; 37 Stat. 699; Penal Code, secs. 238–240.)

(V.)

In legal acceptation, also, "transported" and "carried" are equivalent terms, and the authorities recognize a distinction between "to transport" and "to deliver." Hence, from the use of the former,

there is no necessary inference of an intention to include the latter. It follows that when goods have been carried across a State line into a State they have been "transported into" that State without reference to their ultimate destination or the place where they are to be delivered. (Words and Phrases, Second Series, vol. 4, p. 987; *Railroad* v. *Pratt*, 89 U. S. 123, 133; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 203; *Walker* v. *Railroad*, 137 N. C. 163; *Alexander* v. *Railroad*, 144 N. C. 93.)

(VI.)

Transportation from Maryland through Virginia and into North Carolina includes necessarily an act of transportation into Virginia, and an offense is committed there whether the goods ever reach North Carolina, so that an offense is committed in the latter State, or not.

(VII.)

Congress having enumerated the purposes for which liquor may be transported into a dry State has excluded the possibility of any other exceptions to the prohibition, and the purpose of further transportation to another State is necessarily within the condemnation of the law.

(VIII.)

The present condition is in entire accord with former decisions of this court. (*Rhodes* v. *Iowa*, 170 U. S. 412; *Leisy* v. *Hardin*, 135 U. S. 100.)

(IX.)

If it be assumed that the primary purpose of Congress was to prevent the carrying of liquor into a dry State for use or disposition, it was still within the power of Congress to prevent all transportation through such a State if, in its judgment, that shall be necessary to secure the efficient accomplishment of its purpose. (*Crane* v. *Campbell*, 245 U. S. 304, 307.)

(X.)

Congress must be taken to have meant what its words, fairly interpreted, imply. And if, by the language used, it has made the prohibition more sweeping than was, in fact, intended, it, and not the courts, must correct the mistake. Nor can it be presumed that Congress did not intend a rule, fairly indicated by its language, because, in the opinion of the court, it may be a harsh or unnecessary rule. (*St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U. S. 281, 295.)

(XI.)

Whatever may be said of shipments by common carriers, the personal transportation of liquor by the owner through the State is clearly prohibited.

ARGUMENT.

The general subject of the Reed Amendment is the transportation of liquor in interstate commerce. Its specific subject is such transportation into States whose laws forbid the manufacture or sale of such liquors as a beverage.

NATURE AND SCOPE OF ACT.

The thing which is made unlawful is the transportation in interstate commerce of liquor into a State having laws to the effect mentioned, save and alone when intended for sacramental, scientific, medicinal, or mechanical purposes. That, with the exceptions noted, whatever is a transportation into such a State is forbidden without qualification can not be doubted.

The language used is plain, simple, and in no sense technical. Only words in common use and readily understood in ordinary conversation are employed. There is no effort to define any of them and nothing to indicate that they are used in any but their ordinary sense, or intended to have any unusual significance.

The definitions quoted in the brief of this argument are in accordance with the common understanding that to transport goods means merely to carry them in any manner, and that they have been transported into a State when they have crossed the State line—that is, entered or arrived in the State. And equally common is the understanding that whether they have been carried into the State does not depend, in the slightest degree, upon what is to be done with them after they cross the State line. Having once been

out of the State, the fact that they are in it is conclusive that they have been carried or transported into it. Any schoolboy, asked to detail the course of transportation of goods from Baltimore, Md., to Asheville, N. C., would say that they are carried through Maryland "into" Virginia, through Virginia "into" North Carolina, and to Asheville in that State. When such goods have crossed the Maryland-Virginia line, they have been just as certainly "transported into" Virginia whether they are to remain there or pass on to another State. Moreover, in legal acceptation, "transported or carried are equivalent terms." (*Railroad* v. *Pratt*, 89 U. S., 123, 133.) And to transport, though ordinarily followed by, does not necessarily include delivery. (Words and Phrases, Second Series, vol. 4, p. 987; *Walker* v. *Railroad*, 137 N. C., 163; *Alexander* v. *Railroad*, 144 N. C., 93.)

The business of transporting persons and goods of course includes both taking them up and putting them down as well as carrying them. (*Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 196, 203.) The ordinary transportation of goods by railroad, from place to place, in fact, includes three acts, each of which is in itself an act of transportation. They are carried on or into the cars. They are carried while in the cars. And they are carried from the cars. For convenience, the three may be combined and called one act of transportation. But when any one of them has occurred, the goods have been to that extent transported whether the others ever occur or not. Between the taking up and putting down of a passenger he is car-

ried or transported to every place through which he passes, though he may not alight at any of them. While the law imposes upon a carrier receiving goods the duty of delivering them, that duty can be performed only when transportation has ceased. As the language used is both in ordinary and in legal parlance understood, then the Reed Amendment means that when liquor is being transported in interstate commerce, and not for one of the four excepted purposes, it is forbidden to cross for any purpose the line of a State whose laws prohibit its manufacture or sale for beverage purposes.

PREVIOUS LEGISLATION.

While the language used in the act in question would seem to be too plain and unequivocal to admit of looking elsewhere for the legislative intent, it may not be out of place to refer briefly to previous legislation and to conditions existing at the time of its passage.

Congress had enacted no statute containing a direct and unconditional prohibition against transporting liquor into any State. It had passed laws, such as sections 238 to 240 of the Penal Code, providing regulations that must be observed in the shipment of liquor from State to State. And it had passed two acts which took from liquors the protection of interstate commerce and permitted State laws to operate upon them under certain conditions.

The Wilson Act (26 Stat., 313) did not restrict the right to transport liquor into any State, but provided that liquors transported into a State should upon

their arrival therein become subject to the State laws. Later, the Webb-Kenyon Act (37 Stat., 699) made it possible for the States, by their own laws, to prevent the importation of liquors. This was accomplished merely by enacting that it should be unlawful to transport liquor into any State when intended to be "received, possessed, sold, or in any manner used" in violation of State laws. It may be noted here that in both the Wilson Act and the Webb-Kenyon Act Congress was careful to use apt words to exclude from their operation shipments merely passing through a State. The former was limited to liquors transported into the State for "use, consumption, sale, or storage therein," and the latter prohibited the transportation only when the liquor was to be "received, possessed, sold, or in any manner used" in violation of State laws.

The result of the Webb-Kenyon law was that whether liquor could lawfully be transported into a particular State, and if so, how and to what extent, depended entirely upon the laws of that State. Many States had passed laws forbidding the manufacture and sale of liquor, and the number was rapidly increasing. Such manufacture and sale was already unlawful in a very large part of the territory comprising the United States. Some States had prohibited manufacture and sale without attempting to restrict or regulate importation. Others limited importation either as to quantity or purpose, or both. Still others adopted regulations as to the manner of bringing in. In all these regulations there was the greatest variety imaginable, and the laws of

the various States were undergoing frequent changes. In scarcely any respect was there uniformity, except that probably no State forbade importation for scientific, sacramental, medicinal, or mechanical purposes. To transportation companies and others interested, the situation was equal to a Chinese puzzle. Whether this lack of uniformity was actually the cause of further action by Congress or not, it certainly furnished a good reason for establishing a uniform regulation which should apply throughout that large part of the country in which the manufacture and sale of liquor had been prohibited. And this is what the Reed Amendment does. It forbids the transportation of liquor in interstate commerce—save for the four excepted purposes, which do not include either personal use or further transportation—into those States which do not permit its manufacture or sale for beverage purposes. By its enactment, Congress has said that whenever a State makes liquor a contraband article of local commerce, it shall likewise be contraband in the interstate commerce moving into that State.

TRANSPORTATION THROUGH A STATE PROHIBITED.

Transportation from one State through *another* can never occur without transportation *into* the latter. The transportation into is a necessary part of the transportation through. Hence, when Congress forbids transportation into, without qualification, it unavoidably forbids transportation through a State. And there is nothing in the Reed Amend-

ment from which it can be inferred that this result was not intended.

In passing the Wilson Act and the Webb-Kenyon Act, Congress recognized that the bringing into a particular State of liquors intended to remain within its borders and the manner in which the same should be used or disposed of therein were matters directly affecting that State, and was content to leave them to the local lawmaking power. But the matter of shipments intended only to pass through one State as a means of reaching another more directly affected the interests and the rights of other States. Congress might well say to a State, "You may deal as you deem best with liquor transportation when the destination is within your limits." But it could never be expected to say, "You may also bar from passage across your lines the interstate commerce in liquors in which your neighboring States may desire to engage." It was willing that a particular State should determine whether it would engage in interstate commerce in liquors, but it was not willing that that State should place obstacles in the way of that commerce wholly between other States. Hence, as we have seen, in both of the acts, apt words were used to so limit the effect that only transportation which terminated in a particular State should be subject to the laws of that State. But when it came to pass the Reed Amendment, the controlling considerations were entirely different. It was not then making it possible for the States to control matters related to interstate commerce, but was it-

self laying down a rule by which commerce in intoxicating liquors among all the States was to be controlled. It had the power to entirely exclude liquor from such commerce. It had the same power over transportation terminating in a dry State and that merely passing through it. It could make one rule for the former and another for the latter. But, presumably for reasons satisfactory to itself, it did not, as it had done in former acts, draw any distinction between the two. It was dealing with the interstate transportation of liquors and was content to make a sweeping prohibition against their transportation into a dry State, enumerating four exceptions. This enumeration excludes the possibility of inferring an intention that there should be any other exception. Hence, when liquor has crossed the State line, though only for the purpose of being carried to another State, it has been "transported into" the State within the meaning of the law.

Just what was the controlling reason for forbidding transportation *through* a dry State may not fully appear. The prohibition is not limited to transportation by common carrier, but applies to every kind of transportation. It can readily be seen that transportation by wagon or automobile could easily be resorted to and, under the pretense of intended transportation to another State, local deliveries secretly accomplished and the law evaded. Hence, it might well be deemed necessary to forbid this method of transportation through the State in order to make the law effective. (*Crane* v. *Campbell*, 245 U. S. 307.)

And it is not at all beyond the ability and ingenuity of the bootlegger to use and abuse, through collusion or otherwise, even transportation by common carriers in the same way. But whether these were the controlling reasons or whether there was a purpose to discourage shipments into States not yet dry, or, on the other hand, the hope of making the law so stringent as to cause a reaction, or whether other considerations controlled, Congress has enacted the law, within its power, and of the necessity and wisdom of the measures adopted it alone was the judge.

PRESENT CONTENTION IN HARMONY WITH FORMER DECISIONS OF THIS COURT.

It is true that it was held that, under the Wilson Act, liquors transported into a State became subject to the control of the State not upon crossing the State line, but only upon arrival at their destination and delivery to the consignee. (*Rhodes* v. *Iowa*, 170 U. S. 412.) If this means that goods can not be said to have been transported into a State until they have reached their destination that case is authority against the present contention, and the Reed Amendment could not apply to liquors being transported in Virginia if their ultimate destination was beyond the borders of that State. But the opinion in the case cited will bear no such construction. Its reasoning leads unmistakably to quite the contrary conclusion.

The passage of the Wilson Act followed closely the decision in *Leisy* v. *Hardin* (135 U. S. 100) that,

in the absence of Congressional permission, a State could not interfere with the right to *sell* imported merchandise in the original package. The Wilson Act was as follows:

> That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

In *Rhodes* v. *Iowa*, *supra*, the contention was made on behalf of the State of Iowa that the Wilson Act gave it control the moment a shipment entered its borders, and hence that it could stop transportation at the State line. This was met with the contention that Congress had only intended to give the permission which this court had intimated might enable the State to control imported liquors while they remained in the hands of the consignee in original packages; that there was no intention to interfere with interstate transportation to any point in the State, but only to make the transported goods in the hands of the consignee subject to the State laws just as they had formerly been in the hands of his vendee. There seems to have been no in-

sistence that the words "liquors transported into a State," standing alone, would not apply to all liquors in course of transportation as soon as they crossed the State line. Indeed, it seems to have been assumed, as a matter of course, both in the opinion of the majority and in that of the three Justices who dissented, that they would so apply. The contested question was whether the words "upon arrival in such State," read in connection with the entire context, meant arrival at the State line or at destination within the State. It seems also to have been assumed that the condition implied in these words would ordinarily be complete upon the crossing of the State line. And the ultimate question was whether other language in the act qualified their meaning and gave them an unusual significance. The Court said:

> The words "shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory" in one sense might be held to mean arrival at the State line. *Rhodes* v. *Iowa*, *supra*, 421.

It was thought that the words "transported into any State or Territory or remaining therein for use, consumption, sale, or storage" were incapable of a construction compatible with an intention to give permission to the State to stop shipments at the State line; that the use of these words negatived the possibility of construing the act so that the State might give to its laws an extraterritorial effect by preventing the making of contracts in other States

to transport goods into it; and that the provision that the imported liquors shall not be exempt from the legislative power of the State "by reason of being introduced therein in original packages or otherwise" indicated an intention to deal only with goods after their receipt by the consignee. For these reasons, drawn from the face of the act itself, the court held the legislative power of the State did not attach until arrival at final destination, including delivery to consignee. That this conclusion was not reached without serious debate is evidenced by the fact that three Justices dissented, thinking that even the language referred to was not sufficient to justify giving to the words "transported into" and "upon arrival in" anything but their ordinary meaning.

None of the considerations controlling the decision of *Rhodes* v. *Iowa* can enter into this case. Unlike the Wilson Act, the Reed Amendment does not purport to deal in the slightest degree with goods after transportation. It does not act upon liquors after they are brought in. On the contrary, its sole purpose is to prevent transportation. There are no words limiting its effect to liquors intended to remain in the State for use or disposal therein. Its object is not to remove any obstacle which has been found in the way of a State in enacting effective police laws. It is a direct regulation by Congress itself of a matter over which it has supreme power. It seems perfectly clear that no reason can be found within the four corners of this act for saying that liquor has not been transported into a State as soon as it crosses

the State line, regardless of what future may be in store for it.

As we have seen, the only possible escape for transportation *through* Virginia from the prohibition is to say that a thing has not been transported until it has reached the destination fixed for it by the shipper, and that, since the destination of this liquor was in North Carolina, it was not transported into Virginia, although it had been brought from Maryland, had been carried a good many miles in Virginia, and was still being carried in that State. A moment's consideration will be sufficient to reject such a contention. If transportation into a State is not complete in this case until the ultimate destination in North Carolina is reached, then the same would be true of transportation from Baltimore, Md., with Richmond, Va., as a destination. A person transporting such liquor, if arrested at Lynchburg, Va., could say that not having reached his destination he had committed no offense. He would undoubtedly have carried the liquor into Virginia just as this defendant did and to the same place in Virginia. But equally like this defendant his liquor would not have reached its ultimate destination. If one had not transported liquor into Virginia within the meaning of the Reed Amendment the other had not.

LIQUOR TRANSPORTED PERSONALLY BY OWNER.

But whatever may be said of liquor carried by common carrier through a State under an obligation, imposed by contract, to deliver it beyond the borders of that State, surely there can be no doubt about

liquor, as in this case, carried into the State in the possession of the owner, although he may intend to carry it on to another State. This defendant had brought his liquor from Baltimore to Lynchburg. At Lynchburg and all other places in Virginia through which he had passed it was in his possession and under his control and dominion. He was intending to take it to North Carolina, but he was under no obligation to do so. He was free, if he chose, to change his mind and drink it, or give it away, or sell it, or make any other disposition of it while in Virginia. If it had been consigned and shipped to him at Lynchburg with the understanding that he would immediately carry it to North Carolina, it would scarcely be insisted that it had not been transported into Virginia. As it was he had personally transported it to Lynchburg, and was then in the act of further transporting it to North Carolina. To say that this did not constitute a transportation into Virginia would seem to be almost shocking to common sense.

The conclusions we have reached, we submit, are the only ones that can fairly be drawn from the language used by Congress. It may be that this language gives to the act a broader scope than was intended or understood at the time of its passage, but, if so, the remedy is not with the courts.

Doubtless Congress did not, in fact, intend to make the safety-appliance law so stringent that if a railroad company discovered a defective car it could not lawfully haul it even to the nearest place at

which it could be repaired. But this court did not legislate and supply the amendment. It said Congress must be deemed to mean what its language implies, and enforced the law as it was written. (*St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U. S. 295.) Congress applied the remedy by amending the law. So, in this case, Congress has plainly prohibited all transportation of the character here involved, and if this was not its real intention, it alone can correct the mistake.

It is respectfully submitted that the indictment is good and the judgment should be reversed.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1918.

No. 408.

United States of America, Plaintiff in Error,

vs.

Homer Gudger.

Error to the District Court of the United States for the Western District of Virginia.

BRIEF FOR DEFENDANT IN ERROR.

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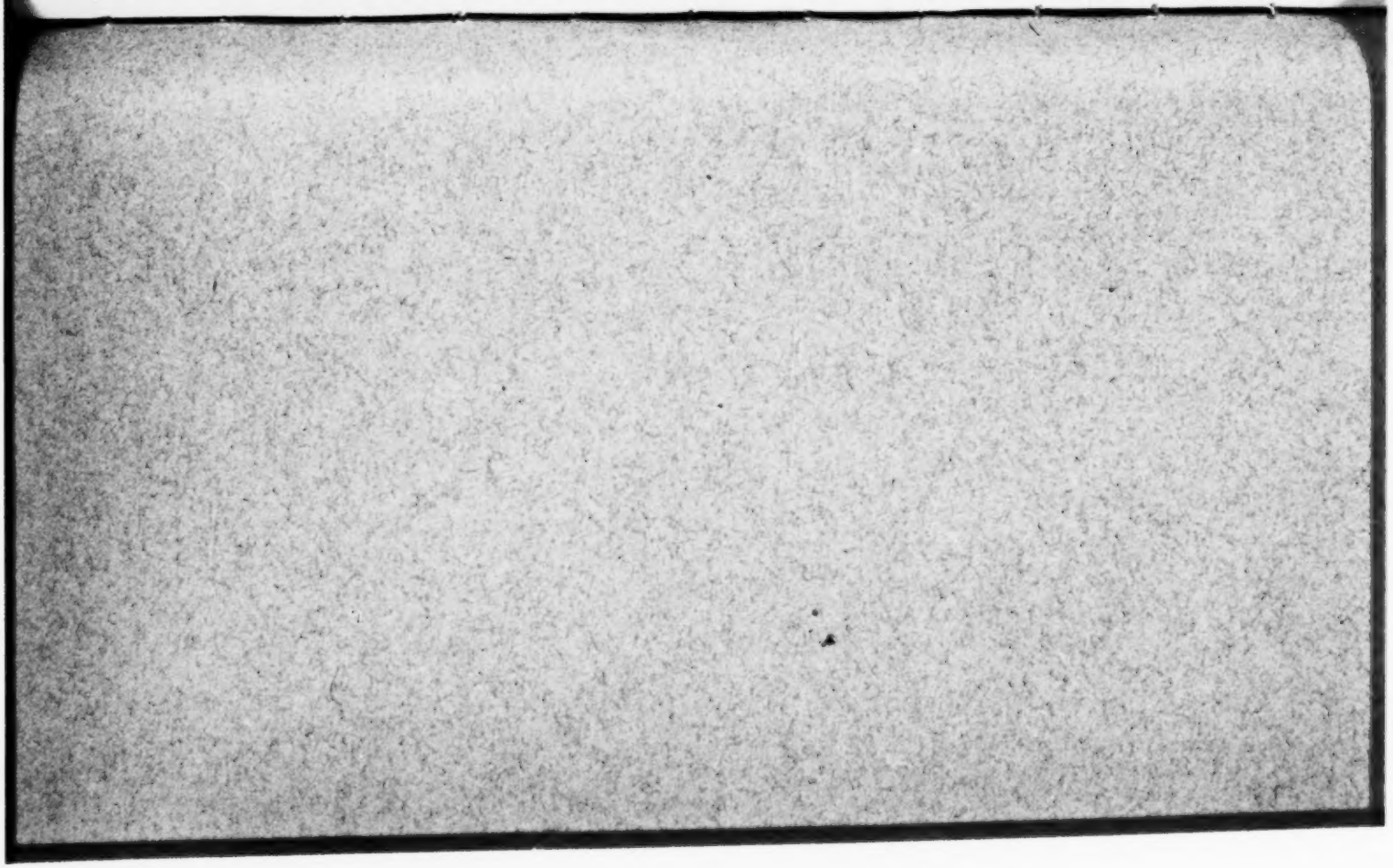

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SUPREME COURT OF THE UNITED STATES
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BRIEF FOR DEFENDANT IN ERROR.

In filing this brief in opposition to the government's contentions in the case of Gudger, we present the views of owners of whiskies in government bonded warehouses, vine growers and manufacturers of wine, and others whose right to ship their goods in the ordinary channels of commerce between states whose laws legalize the manufacture and sale of such articles is attacked. If the government's contention should be sustained, citizens of California who are the owners of whisky in bond in Pennsylvania and Kentucky in order to effect delivery would have to make use of a route through Canada or by way of the Panama Canal,

and all vine growers in California could dispose of their product in lawful markets in the eastern states only by similar shipments; this result being brought about by the fact that any such shipments in interstate commerce across the continent would necessarily run through "dry" states.

Statement of Facts.

On a day in February, 1918, defendant in error, who was a passenger on an interstate train from Baltimore, Maryland, to Asheville, North Carolina, having a through ticket in his possession between those points, and intending in good faith to prosecute the journey, was at Lynchburg, Virginia, while the train was stopping at the station there, taken from the train, arrested and afterwards indicted by the grand jury in the court below for violation of the Act of March 3, 1917 (39 Stat. 1058, 1069), on the charge that he "did knowingly, unlawfully and feloniously cause to be transported in interstate commerce intoxicating liquors not for scientific, sacramental, medicinal or mechanical purposes . . . . from Baltimore in the State of Maryland, to Lynchburg in the State of Virginia, in said Western District of Virginia." The liquors in question were being carried in his dress suit case as personal baggage and were intended for personal consumption and not to be used in violation of any law. (Indictment R. 1, Bill of Particulars R. 2). A demurrer to the indictment as explained by the bill of particulars filed therewith was sustained on the ground

that it was not sufficient in law and the Government prosecutes error. The indictment was based on Section 5 of the Post Office Appropriation Act of March 3, 1917 (39 Stat. 1058, 1069), which, by joint resolution of March 4, became effective July 1, 1917.

The Entire Section Should be Considered.

Neither the government in its brief, nor the court below, nor District Judge Keller in the lower court in United States vs. Hill, No. 357, this term, also involving the construction of the section, considered it necessary to deal with any part of the section except that part known as the Reed Amendment, which provides;

> "Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce except for scientific, sacramental, medicinal and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished as aforesaid: **Provided**, that nothing herein shall authorize the shipment of liquor into any state contrary to the laws of such state; etc."

Our construction of the statute as applied to the transactions in this case and in the case of United States vs. Hill, to wit, personal transportation for personal use, involving no commercial aspect of interstate commerce, by use of the mails or otherwise, precludes us from confining our attention to the single clause

above quoted, but necessitates a consideration of the whole section, which is;

> "That no letter, postal card, circular, newspaper, pamphlet, or publication of any kind containing any advertisement of spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, or containing a solicitation of an order or orders for said liquors, or any of them, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter carrier, when addressed or directed to any person, firm, corporation, or association, or other addressee, at any place or point in any State or Territory of the United States at which it is by the law in force in the State or Territory at that time unlawful to advertise or solicit orders for such liquors, or any of them, respectively.
>
> If the publisher of any newspaper or other publication or the agent of such publisher, or if any dealer in such liquors or his agent, shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than $1,000 or imprisoned not more than six months, or both; and for any subsequent offense shall be imprisoned not more than one year. Any person violating any provision of this section may be tried and punished, either in the district in

which the unlawful matter or publication was mailed or to which it was carried by mail for delivery, according to direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal and mechanical purposes, into any State or Territory, the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid: **Provided**, That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State: **Provided further**, That the Postmaster General is hereby authorized and directed to make public from time to time in suitable bulletins or public notices the names of States in which it is unlawful to advertise or solicit orders for such liquors."

The Statute has no Application Unless the Mails are Used.

Paragraph 1 of Section 5 provides that no letter, newspaper, or other publication containing advertisements of, or solicitation of orders for liquors, shall be deposited or carried in the mails or delivered, when addressed to any point where it is unlawful, that is, unlawful by state law or local ordinance, to advertise or solicit such orders; recognizing the existence of such laws or ordinances in several states. The first

sentence of the second paragraph of section 5 provides that the publisher of a newspaper or publication, or his agent, or a dealer in liquors, or his agent who shall knowingly deposit in the mails or send or cause to be sent any such advertisement or solicitation of orders shall be fined not more than $1,000.00 etc; and the second sentence of the second paragraph provides that any person violating any provision of the section may be tried "either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery, according to the direction thereon, etc." The third sentence of the second paragraph (The Reed Amendment) provides that whoever shall violate that clause "shall be punished as aforesaid."

The Wilson Law (Act of Congress of August 8, 1890, 26 Stat. 313) "permitted the state prohibitions to take away from interstate commerce shipments a right which they otherwise would have embraced, that is, the right to sell after receipt in the original package, any state law to the contrary notwithstanding." (Clark Distilling Co. vs. Western Maryland Railway Co., 242 U. S. at 323). The Webb-Kenyon Law (Act of Congress of March 1, 1913, 37 Stat. 699) operated to give effect to prohibitions of a state law "in respect of liquors shipped into the state for personal use by withdrawing from such shipments the immunity of interstate commerce and to forbid the shipment or transportation into the state of liquors intended to be re-

ceived or possessed there for personal use contrary to such state prohibitions (Clark Distilling Co. vs. Western Maryland Railway Company, 242 U. S. 311). The decision of that case construed the Webb-Kenyon Law as one which withdrew from shipments prohibited by State law the immunity of interstate commerce and permitted the state law, whether penal or otherwise, to operate against carriers and others attempting to bring liquors into the state for forbidden purposes. But there was nothing in the Wilson Law or the Webb-Kenyon Law which could be construed as authorizing a state to prevent outside dealers from sending advertising matter, etc., into the state or as preventing persons in the state, consequent upon such advertising or otherwise, from ordering, purchasing and causing liquors to be shipped to them in interstate commerce.

While, under the decision of the Clark Distilling Co. case, the state had power to prohibit and stop the transportation of imported liquors after they had crossed the state line, it appears that Congress did not consider this power sufficient to meet all the evils connected with the traffic. Therefore by section 5, Congress dealt with preliminary negotiations through the mails calculated to initiate such traffic and exercised the power which no single state could have exercised of punishing the persons wherever located who undertook to conduct such negotiations. Prior to the enactment of the Reed Amendment numerous states by constitutional or statutory provision were "dry" in the sense

that the manufacture or sale of intoxicating liquors for beverage purposes was prohibited therein; but with very few exceptions (e. g. Idaho, see Crane vs. Campbell, 245 U. S. 304, where the possession of liquor for beverage purposes was prohibited and West Virginia, see Clark Distilling Co., vs. Western Maryland Railway Company, where possession of liquors received from a carrier was made unlawful), the states generally imposed no penalty upon the resident of a state who ordered liquors shipped to him in interstate commerce; and no state, obviously for want of power to enforce such a provision undertook to penalize the licensed dealer in another state who advertised, received orders and made the shipments. A very common provision of state laws in "dry" states in recent years has been to expressly permit the citizen to import liquors for personal use; sometimes in limited quantities at stated periods, sometimes without limit as to amount. (e. g. North Carolina, Sea Board Air Line Railway Company vs. North Carolina, 245 U. S. 298). In Kentucky it is a criminal offense for a carrier to deliver any liquor in local option or dry territory in that state, but the Court of Appeals has upheld the right of a citizen of the state to import liquors from other states and have and use them, as a right founded upon the Constitution of Kentucky. See Adams Express Co. vs. Kentucky, 238 U. S. 200. In reaching a construction of the Reed Amendment the court may take notice of conditions generally well known and set

forth to some extent in previously decided cases, and the evils which Congress intended to deal with.

The primary purpose of the entire section was evidently to fortify and supplement state laws, to prevent evasions of state laws, which were designed to put an end to interstate traffic, and in some cases to prevent the importation of liquors into dry states, in spite of state laws in such states permitting the importation. These purposes were to be accomplished in two ways, separately dealt with in the statute;

First. By imposing a penalty upon dealers having liquors for sale who should endeavor to sell them in dry states by advertising or solicitation of orders through the United States mail addressed to persons within territory where the advertisement or solicitation of orders for liquors was prohibited;

Second. By punishing the person who, in answer to such solicitation or otherwise, should order, purchase or cause liquors to be transported in interstate commerce and delivered to him in a state where the manufacture and sale of liquors is prohibited.

We submit that the second class of persons, to wit, those dealt with in the Reed Amendment, who should order, purchase or cause liquors to be shipped in interstate commerce into dry territory, were intended to be punished by the federal law, just as were persons within the first class, that is only when they made use of the mails to effect the forbidden acts: leaving to the states, if they saw fit, under the broad powers which

the Webb-Kenyon law conferred on the states, the authority to punish citizens who might import liquors into the state otherwise than by use of the mails.

Such construction is indicated, primarily, by the fact that the entire statute, outside of the six lines designated as the Reed Amendment, deals with no other subject than the mails and post offices. It is also indicated by the fact that it is by and through the mails that liquors, as well as other articles, are usually, ordered, purchased and caused to be transported, when they are dealt in between states. In prohibiting the use of the mails for ordering, purchasing and causing liquors to be transported, Congress confined itself to traffic between states, for the obvious reason that the states had full power to prevent the traffic intra-state, by mail (Hayner vs. State, 83 O. S. 178), or otherwise (Delamater vs. South Dakota, 205 U. S. 93; Clark Distilling Co. vs. Western Maryland Railway Co., 242 U. S. 311).

If the Reed Amendment be not construed as confined to cases where the mails are used, it would seem difficult to incorporate into it, the provisions for penalties and venue, which purport to be incorporated by the words "shall be punished as aforesaid." The provision for penalty so incorporated into the amendment, is in terms confined to those who use the mails: and the provision for venue, which is made exclusively applicable to all offenses against section 5, determines the venue by the fact and locality of the use of the mails.

Even if the Statute Applies to Cases Where the Mails are not Used the Judgment Below was Right, Because Defendant in Error Did Not Cause Liquors to be Transported in Interstate Commerce.

When he was arrested at Lynchburg, Virginia, Gudger was carrying or transporting the liquors himself as distinguished from **causing** them to be transported; and he was not transporting them in commerce at all, but as a personal transaction. If Congress had intended to prohibit personal transportation by the individual for himself, Congress would naturally have used some such expression as was used in the White Slave Traffic Act of June 25, 1910 (36 Stat. 825) where the words are, "that any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce etc." (Hoke vs. United States, 227 U. S. 308).

The several words used to designate the distinct and separate offenses created by the statute, to wit, "order," "purchase," "cause," are evidently to be read as qualified by the balance of the phrase "intoxicating liquors to be transported in interstate commerce;" and are to be construed under the rule **ejusdem generis**. Assuming that Gudger purchased the liquors at Baltimore before he started on his trip, it cannot be said that he ordered them or purchased them to be transported in interstate commerce, within the meaning of the statute. The transaction whereby he

acquired the liquors was entirely a local one, presumably and in fact legal by the laws of Maryland. It is a violent straining of language to say that by personally transporting the liquors so purchased locally, he "caused them to be transported in interstate commerce."

In United States vs. Freeman, 239 U. S. 117, involving Section 240 of the Criminal Code, the Government, whose contentions were sustained, pointed out in reference to that statute that "the offense 'causing' to be shipped constitutes a separate crime from 'shipping' and is capable of performance in a separate district."

In United States vs. Hill, Number 357, this term, now pending, District Judge Keller in the District Court for the Southern District of West Virginia held that such a transaction did not constitute transportation "in interstate commerce" saying (R. p. 8).

> "To my mind the commercial history of the liquor referred to in the indictment ceased with its purchase and delivery to the defendant in Catlettsburg, Kentucky, and in respect to the following interstate journey by trolley car from Catlettsburg, Ky., to Kenova, W. Va., it was utterly indifferent whether the defendant carried the liquor on his person or in his person."

Judge Keller's view was that the statute made a clear distinction between "interstate commerce" and "interstate transportation." He pointed out that the Wilson Law refers to "all liquors transported into any state," and the Webb-Kenyon Law to "the shipment

or transportation . . . of liquors . . . from one state . . . into any other state:" while the present law uses the words "cause liquors to be transported **in interstate commerce** . . . into any State etc." The Wilson Law in terms subjects imported liquors to the state law in respect to their "use," and the Webb-Kenyon law is applicable to liquors imported for personal use, as held in the Clark Distilling Company case. The words in the present law "in interstate commerce" are not, we submit, merely a substitute for "from one state to another," that idea being fully expressed by the words "transported into any State." The added words "in interstate commerce," indicate that the transaction must be a commercial one; which construction is especially required by the inclusion in the phrase of the words order and purchase, words essentially denoting commerce.

The fact that Gudger was on an interstate train is a mere fortuitous circumstance; he might have walked across the state line or ridden in an automobile, or in a trolley car, like the accused in United States vs. Hill.

United States vs. Chavez, 228 U. S. 525, relied on by the Government, is not in point. That case dealt with a joint resolution which made it unlawful to "export" or "ship" munitions of war to any American country where conditions of domestic violence existed. The court upon a consideration of the purposes of the statute and the terms used held that its prohibitions were not rendered inapplicable because resort was had to personal carriage as a means of moving the pro-

hibited articles. The construction placed upon the words of that statute cannot be used for the purpose of giving to the words "cause to be transported in interstate commerce," in this statute the meaning, "transporting from one state to another."

Defendant in Error Did Not Cause the Liquors to be Transported into Virginia Within the Meaning of the Statute.

The indictment alleges that Virginia is a state "which prohibits the manufacture or sale therein of intoxicating liquors for beverage purposes," and that defendant in error caused the liquors to be transported into that state. The Bill of Particulars shows that defendant in error and his dress suit case and contents were enroute under a through ticket to Ashville, N. C. He had no intention to discontinue his journey or to dispose of the liquors in the state of Virginia and in so far as the record shows the liquors would never have been taken from the through train except for the act of the officers in arresting defendant in error while the train was stopping at the station in Lynchburg, Va. The Government seeks to construe the statute as if it read "through" instead of "into," and presents an elaborate argument on this point, fortified by an argument from inconvenience, that if the statute is not applicable to a transaction of this kind, no offense would be committed in any case until the goods had reached their ultimate destination. But this result does not follow. The Reed Amendment deals with states as

such and not with stations or other subdivisions of states. Assuming that the other requirements to constitute an offense are made out it may be conceded that the entire offense is committed when liquors destined to a point in a state, the laws of which prohibit the manufacture or sale therein, have been caused to be transported in interstate commerce, into such state, by crossing the boundary line. This is an entirely different situation from that presented in the present case, where the destination was a point in North Carolina, which for purposes of this case might be a wet as well as a dry state, and the offense is alleged to have been committed in the state of Virginia.

United States vs. Freeman, 239 U. S. 117 involved the construction of Section 240 of the Criminal Code, and especially the words "ship or cause to be shipped from one state, . . . into any other state." The court said at page 120:

> "As usually understood, to ship a package **from** one state **into** another or **from** a foreign country **into** a state is to accomplish its transportation from the one into the other by a common carrier and is essentially a continuing act whose performance is begun when the package is delivered to the carrier and is completed when it reaches its destination. We think it is to such an act that the statute refers. To reach a different conclusion the word "ship" must be read as if it were "deliver for shipment."

To give the statute the construction urged by the Government might in some instances result in cutting

off the citizens of a wet state from all legal traffic in liquors, simply because of the circumstance that all surrounding border states were dry. In many other instances such construction would compel the traffic to move by circuitous and inconvenient routes for the purpose of avoiding transportation across dry states. We have already indicated the result upon traffic between California and eastern states, if the government's contention should be sustained, a result so far-reaching, that if Congress had intended it, we should have expected the language used to be free from doubt.

The argument is pressed, that Congress having enumerated the purposes, to-wit; scientific, sacramental, medicinal and mechanical, for which liquors may be transported into a dry state, transportation into such state for other purposes is forbidden. This argument might be of weight, if the liquors were destined to a point in Virginia, with an intention to re-ship into North Carolina at some future time, and as a separate transaction. But the purpose for which the liquors in this case were brought into Virginia, that is, continuous through transportation to North Carolina, is not **ejusdem generis** with the purposes expressed in the statute, so that their inclusion would lead to an implication that through traffic is forbidden.

We respectfully submit the judgment below should be affirmed.

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